

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CRAIG A. THOMPSON,

Petitioner,

: Case No. 3:18-cv-117

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

CHAE HARRIS, Warden,
Warren Correctional Institution

:

Respondent.

**DECISION AND ORDER DENYING MOTION TO EXPAND THE
RECORD AND GRANTING EXTENSION OF TIME**

This habeas corpus case under 28 U.S.C. § 2254 is before the Court on Petitioner's Request for Toll and Request for Remainder of State Court Record (ECF No. 13). Having reviewed the State Court Record filed by Respondent, Petitioner notes the absence of two items, requests the Court to order the record expanded to include them, and moves that his time to file a reply be tolled until they are filed and furnished to him.

In ordering Respondent to file the state court record, the Court specified that the Respondent "file those portions of the state court record needed to adjudicate this case." (ECF No. 3, PageID 23). The Magistrate Judge has authority under Habeas Rule 7 to order the record expanded, but the governing question must be whether the added materials are needed to adjudicate the case.

The first item Petitioner seeks is the item identified on the Montgomery County Clerk of Courts' docket as "Transcript & all original papers from lower court filed," from the Vandalia Municipal Court, filed in the Common Pleas Court February 21, 2013 (State Court Record, ECF

No. 11, PageID 1032.) Such an entry typically describes the “bindover” papers from the municipal or county court which had original cognizance of the case and bound Petitioner over to the grand jury. Petitioner has not shown what relevance these papers would have to the adjudication of this case. On its face, the Petition does not make any claim related to the Vandalia Municipal Court proceedings and Petitioner has not argued for any such relevance. The motion to expand to include these bindover papers is DENIED.

The second request is for the remainder of the transcript from the motion to suppress hearing in the Common Pleas Court. Petitioner again reads the Clerk’s docket as referring to "court submitted electronic transcript of proceedings filed Volume I-1, second and third days of motion to suppress hearing" on March 4, 2016 (ECF No. 13, PageID 2219, citing State Court Record Page ID 1026).

Examining the State Court Record as filed, the Magistrate Judge finds the transcript of both the motion to suppress and the jury trial begins at PageID 1036 with the motion to suppress as heard on June 6, 2013, concluding at PageID 1157. On the same page at the very next line of the transcript, the jury trial of December 7, 2015, commences. Thus the transcript of the motion to suppress hearing and of the first day of trial appear to have been combined in one volume of transcript. It appears to the Magistrate Judge that the full transcript of the motion to suppress has already been filed. Therefore Petitioner’s second request to expand the record is DENIED AS MOOT.

Petitioner’s time to file his reply to the Return of Writ is extended to and including October 30, 2018.

October 8, 2018.

s/ *Michael R. Merz*
United States Magistrate Judge